IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

MFA.No. 1051 of 2000(B)

OPMV.106/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
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APPELLANT: 3RD RESPONDENT

UNITED INDIA INSURANCE CO. LTD.,
REP.BY ITS ASST.MANAGER, THIRD PARTY CLAIMS
CELL, IV, VETTUKATTIL BUILDINGS, JOSE JUNCTION,
KOCHI- 16.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENTS: PETITIOENR AND RESPONDENTS 1 &2
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1. VIJAYAN, S/O. KUNJANADHAN NAIR,
AGED 31 YEARS, VIJAYA MANDIRAN,
KOTTATHARA P.O., KOTTATHARA AMSOM
OF VYTHIRI TALUK.

***2. SURESH V., S/O. BALAKRISHNAN NAIR,**
AGE NOT KNOWN, SUBA NIVAS,
KOTTATHARA P.O., KOTTATHARA AMSOM
DESOM OF VYTHIRI TALUK. (DELETED)

3. K.SASINDARAN, AGED NOT KNOWN,
S/O. KUNHI KRISHNAN, RAMALAYAM,
THEKKUMTHARA P.O., VENGAPALLY AMSOM DESOM
OF VYTHIRI TALUK.

*** R2 IS DELETED FROM THE PARTY ARRYA AT THE RISK OF THE PETTIONER AS PER ORDER DT. 10.7.07 IN IA. 1415/07.**

BY ADV. SRI.S.MUHAMMED HANEEFF
SRI.JACOB MURIKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A. NO.1051/2000

ORDER ON CMP. NO.5875/2000 IN MFA. NO.1051/2000

DISMISSED

22.10.2007

SD/- J.B.KOSHY, JUDGE
SD/- K.HEMA, JUDGE

/TRUE COPY/

P.S. TO JUDGE

tss

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 1051 of 2000

Dated this the 22nd day of October, 2007

Judgment

Koshy,J.

Insurance company filed this appeal questioning the award of the Motor Accidents Claims Tribunal in O.P. (M.V.) No.106 of 1995. First respondent filed claim petition contending that while he was travelling in an autorickshaw, the autorickshaw overturned due to the negligence of the driver and the autorickshaw was insured by the appellant insurance company. According to the first respondent, he was a school teacher. He claimed Rs.1,65,250/- as compensation. The tribunal, on the basis of Ext.A1 F.I.R. and Ext.A2 scene mahazar, found that autorickshaw overturned due to the negligence of the driver of the autorickshaw and since there is valid insurance coverage, insurance company is liable to pay the compensation. Amount claimed in the petition is Ra.1,65,250/-. The tribunal has awarded Rs.1,60,000/- with 12% interest from the date of application. It is also ordered that if the amount is not paid within 30 days, the insurance company shall pay interest at the rate of 13%. According to the insurance company, no evidence was

adduced to prove the monthly income. Even though it is contended that he was a school teacher, no oral or documentary evidence was adduced. There is no evidence to show that he lost job because of the accident. As per Ext.A3 wound certificate the injuries are: (1) Tender soft swelling of 3 x 4 c.m. size above the Rt. eye brow on the forehead; (2) Tender soft swelling 1 x 3 c.m. on the Lt. eye brow; (3) Tender below Rt. eye; (4) Pain at the back of neck. He was treated as an inpatient only for two days. No treatment certificate was produced even though disability certificate was produced by him which was marked as Ext.P7. We are of the opinion that the award passed by the tribunal is exorbitant and is liable to be set aside. We remand the matter for fresh consideration. Both parties are allowed to adduce further evidence with regard to the occupation of the claimant, monthly income, percentage of disability suffered and damage suffered due to the accident etc. Additional evidence is allowed to be adduced only with regard to the quantum of compensation and not with regard to the finding of negligence. With regard to the percentage of disability, claimant should be examined by the District Medical Board for assessing percentage of loss of earning capacity as provided under section 4 (1) (c) (ii) and Explanation II to the above sub-section of the Workmen's

Compensation Act and the tribunal should also bear in mind the percentage of disability certified by the medical board for calculating the compensation. We are remanding the matter without expressing any opinion regarding the merits of the matter. Parties may appear before the tribunal on 17.12.2007. We make it clear that the tribunal cannot award interest on interest as a punishment for not depositing the amount within 30 days. The tribunal shall dispose of the matter as expeditiously as possible as the accident occurred in 1994.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A.NO. 1051 OF 2000

Judgment

Dated:22nd October, 2007